

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

SHARON NESS, individually,

Plaintiff,

NO. C10-5111 FDB

vs.

LAW ENFORCEMENT SUPPORT AGENCY (LESA); PIERCE COUNTY; CITY OF TACOMA; DIANA LOCK; individually and in her personal capacity as assistant director for LESA communications; KELLY BOCHENSKI, individually and in her personal capacity as administrative assistant director for LESA communications; JOHN PIRAK, individually and in his personal capacity as director of LESA communications; TOM ORR, individually and in his personal capacity as director of LESA communications; JODI MAIER, individually and in her personal capacity as schedule supervisor for LESA communications.

**DEFENDANTS' ANSWER AND
AFFIRMATIVE DEFENSES**

Defendants.

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1 COME NOW the defendants in above-captioned action, by and through
 2 their attorneys of record, and by way of answer to plaintiff's complaint, admit,
 3 deny, and allege as follows:

4 **I. STATEMENT OF THE CASE**

5 In answer to this section of plaintiff's complaint, defendants assert that
 6 this paragraph contains only legal assertions to which no responsive pleading is
 7 required.

8 **II. JURISDICTION AND VENUE**

9 2.1 In answer to paragraph 2.1 of plaintiff's complaint, defendants
 10 admit that this court has jurisdiction over plaintiff's claims pursuant to 28 U.S.C.
 11 §1331 and §1367. As to the remaining allegations contained herein, the
 12 defendants deny the same.

13 2.2 In answer to paragraph 2.2 of plaintiff's complaint, defendants
 14 admit the same.

16 **III. PARTIES**

17 3.1 In answer to paragraph 3.1 of plaintiff's complaint, defendants
 18 admit the same.

19 3.2 In answer to paragraph 3.2 of plaintiff's complaint, defendants
 20 deny that defendant LESA is a local agency subject to liability under 42 U.S.C.
 21 § 1983. As to the remaining allegations contained in paragraph 3.2, defendants
 22 admit the same.

23 3.3 In answer to paragraph 3.3, defendants admit that defendant
 24 Pierce County is a political subdivision of the State of Washington authorized to

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1 do business in the State of Washington and doing business in the State of
2 Washington under color of state law. As to the remaining allegation in
3 paragraph 3.3, defendants deny that all acts of its employees are the acts of the
4 County.

5 3.4 In answer to paragraph 3.4 of plaintiff's complaint, defendants
6 admit the same.

7 3.5 In answer to paragraph 3.5 of plaintiff's complaint, defendants
8 admit that defendant Lock is an Assistant Director and directly responsible for
9 the 911 Call Center. Defendants deny any misconduct by defendant Lock. As
10 to the remaining allegations contained herein, the defendants assert that these
11 are only legal assertions to which responsive pleadings are not required. If
12 responsive pleadings are deemed required, defendants deny the same.

13 3.6 In answer to paragraph 3.6 of plaintiff's complaint, defendants
14 admit that defendant Bochenski is an Assistant Director and directly responsible
15 for medical requests by LESA employees. Defendants deny any misconduct by
16 defendant Bochenski. As to the remaining allegations contained herein, the
17 defendants assert that these are only legal assertions to which responsive
18 pleadings are not required. If responsive pleadings are deemed required,
19 defendants deny the same.

20 3.7 In answer to paragraph 3.7 of plaintiff's complaint, defendants
21 admit that defendant Pirak is the former Director of LESA and that he was
22 directly responsible at the time for overseeing all aspects of LESA. Defendants
23 deny any misconduct by defendant Pirak. As to the remaining allegations
24

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1 contained herein, the defendants assert that these are only legal assertions to
 2 which responsive pleadings are not required. If responsive pleadings are
 3 deemed required, defendants deny the same.

4 3.8 In answer to paragraph 3.8 of plaintiff's complaint, defendants
 5 deny that defendant Jodi Maier is the scheduling supervisor for LESA but admit
 6 she is designated as a supervisor, whose duties include scheduling LESA
 7 Communications employees and coordinating work shifts. Defendants deny
 8 any misconduct by defendant Maier. As to the remaining allegations contained
 9 herein, the defendants assert that these are only legal assertions to which
 10 responsive pleadings are not required. If responsive pleadings are deemed
 11 required, defendants deny the same.

12 3.9 In answer to paragraph 3.9 of plaintiff's complaint, defendants
 13 admit that defendant Tom Orr is the current director of LESA, but deny that
 14 defendant Orr is the current director of only LESA Communications.
 15 Defendants deny any misconduct by defendant Orr. As to the remaining
 16 allegations contained herein, the defendants assert that these are only legal
 17 assertions to which responsive pleadings are not required. If responsive
 18 pleadings are deemed required, defendants deny the same.

19 3.10 In answer to paragraph 3.10 of plaintiff's complaint, defendants
 20 admit the same.

21 **IV. STATEMENT OF FACTS**

22 4.1 In answer to paragraph 4.1 of plaintiff's complaint, defendants
 23 admit the same.

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1 4.2 In answer to paragraph 4.2 of plaintiff's complaint, defendants are
2 without knowledge or information sufficient to form a belief as to the truth of the
3 allegations contained therein, and therefore, deny the same.

4 4.3 In answer to paragraph 4.3 of plaintiff's complaint, defendants are
5 without knowledge or information sufficient to form a belief as to the truth of the
6 allegations contained therein, and therefore, deny the same.

7 4.4 In answer to paragraph 4.4 of plaintiff's complaint, defendants
8 admit that on April 20, 2004, a meeting was held in which defendant John Pirak,
9 LESA Director at the time, and defendant Diana Lock, Assistant Director, were
10 present. Also present were Angela Hardy from the City of Tacoma's Human
11 Resources Department, union representative Kim Sirianni, and on information
12 and belief, Ann Mueller, an IT representative. Defendants admit that during the
13 meeting, plaintiff requested she be provided a typewriter. Defendants admit
14 that plaintiff provided a note from her physician, but deny that the physician's
15 note indicated that any accommodations for her condition were required to
16 enable her to perform the essential functions of her position. As to the
17 remaining allegations contained in paragraph 4.4, defendants deny the same.
18

19 4.5 In answer to paragraph 4.5 of plaintiff's complaint, defendants
20 admit that plaintiff met with defendants Bochenski and Lock and her union
21 representative Mark Manning in January 2009 to discuss plaintiff's request for
22 accommodations. As to the remaining allegations in paragraph 4.5, defendants
23 deny the same.
24

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1 4.6 In answer to paragraph 4.6 of plaintiff's complaint, defendants
2 admit the same.

3 4.7 In answer to paragraph 4.7 of plaintiff's complaint, defendants
4 admit there are multiple shifts at LESA Communications, including, but not
5 limited to day, swing and graveyard. Defendants admit the swing shift hours
6 are from 3:00 p.m. to 11:00 p.m., 3:00 p.m. to 1:00 a.m., and 5:00 p.m. to 3:00
7 a.m. Defendants admit that LESA employees annually "bid" for the shift they
8 want to work the following year. Defendants deny that once an employee
9 successfully bids for swing shift, that employee rotates only among the three
10 different time slots for swing shift. With regards to the remaining allegations
11 contained in paragraph 4.7, the defendants are without knowledge or
12 information sufficient to form a belief as to the truth of the allegations contained
13 therein, and therefore, deny the same.

14 4.8 In response to paragraph 4.8 of plaintiff's complaint, the
15 defendants deny that the "barrel" shift is "in addition to" the regular shifts and
16 assert that the "barrel" shift is a regular shift. With regards to the remaining
17 allegations contained in paragraph 4.8, defendants admit the same.

18 4.9 In response to paragraph 4.9 of plaintiff's complaint, defendants
19 admit that on or about May 20, 2008, plaintiff provided a note from her doctor
20 which indicated plaintiff needed to be on a regimented medication and sleep
21 schedule to control her tremors, and plaintiff requested an accommodation
22 allowing her to work only the swing shift. Defendants admit that they
23 temporarily accommodated plaintiff's request to limit her to work hours to the
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1 swing shift and temporarily excused plaintiff from assignment to the barrel shift
2 until the accommodation request could be formally addressed. As to the
3 remaining allegations contained in paragraph 4.9, defendants deny the same.

4 4.10 In response to paragraph 4.10 of plaintiff's complaint, defendants
5 admit that plaintiff's physician provided an ADA Request which outlined that
6 plaintiff required a regimented medication and sleep schedule and that her
7 doctor requested that she be scheduled to work only the swing shift time slots.
8 The defendants deny that plaintiff's physician recommended a communication
9 device or stated that such a device was necessary as a reasonable
10 accommodation, but admit that he requested she be provided with a
11 communication device.

12 4.11 In response to paragraph 4.11 of plaintiff's complaint, defendants
13 deny the same.

14 4.12 In response to paragraph 4.12 of plaintiff's complaint, defendants
15 are without knowledge or information sufficient to form a belief as to the truth of
16 the allegations contained therein, and therefore, deny the same.

17 4.13 In response to paragraph 4.13 of plaintiff's complaint, defendants
18 admit that plaintiff filed a complaint with the Equal Employment Opportunity
19 Commission and the Human Rights Commission. As to any remaining
20 allegations contained in paragraph 4.13, defendants deny the same.

21 4.14 In response to paragraph 4.14 of plaintiff's complaint, defendants
22 admit that plaintiff's work performance has been, for the most part, acceptable.
23 Defendants admit that there have been occasions where supervisors unaware
24

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1 of plaintiff's shift restrictions have called to see whether plaintiff would be
 2 available to work an extra shift. As to the remaining allegations contained in
 3 paragraph 4.14, defendants deny the same.

4 4.15 In response to paragraph 4.15 of plaintiff's complaint, on
 5 information and belief, defendants admit the same.

6 **V. CAUSES OF ACTION**

7 **First Cause of Action - Discrimination**

8 9 5.1 In answer to paragraph 5.1 of plaintiff's complaint, defendants
 10 deny the same.

11 5.2 In answer to paragraph 5.2 of plaintiff's complaint, defendants
 12 deny the same.

13 14 **Second Cause of Action – Intentional and Negligent Infliction of**
 15 **Emotional Distress**

16 5.3 In answer to paragraph 5.3 of plaintiff's complaint, defendants
 17 deny the same.

18 **Third Cause of Action – RCW 49.60**

19 5.4 In answer to paragraph 5.4 of plaintiff's complaint, defendants
 20 deny the same.

21 22 **Fourth Cause of Action – Violation of 42 U.S.C. § 1983 and State**
Constitution

23 24 5.5 In answer to paragraph 5.5 of plaintiff's complaint, defendants
 25 deny the same.

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5.6 In answer to paragraph 5.6 of plaintiff's complaint, defendants deny the same.

5.7 In answer to paragraph 5.7 of plaintiff's complaint, defendants deny the same.

5.8 In answer to paragraph 5.8 of plaintiff's complaint, defendants admit that defendant Orr has final decision making authority in his capacity as Director of LESA, but deny that defendant Orr failed to accommodate plaintiff's schedule and equipment requests. Defendants deny that defendant Lock had final decision making authority. As to any remaining allegations contained in paragraph 5.8, defendants deny the same.

5.9 In answer to paragraph 5.9 of plaintiff's complaint, defendants deny the same.

5.10 In answer to paragraph 5.10 of plaintiff's complaint, defendants deny the same.

5.11 In answer to paragraph 5.11 of plaintiff's complaint, defendants deny the same.

AFFIRMATIVE DEFENSES

6.1 FOR FURTHER ANSWER AND BY WAY OF AN AFFIRMATIVE
DEFENSE TO PLAINTIFF'S COMPLAINT, these defendants state that there is
no causation between the acts alleged as against these defendants and the
damages claimed to have been sustained by the plaintiff.

6.2 FOR FURTHER ANSWER AND BY WAY OF AN AFFIRMATIVE
DEFENSE TO PLAINTIFF'S COMPLAINT, these defendants allege that, with

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1 respect to some or all of the claims asserted, plaintiff has failed to state a claim
2 upon which relief can be granted.

3 6.3 FOR FURTHER ANSWER AND BY WAY OF AN ADDITIONAL
4 AFFIRMATIVE DEFENSE TO PLAINTIFF'S COMPLAINT, defendants allege,
5 based on information and belief and for purposes of avoiding waiver, that
6 plaintiff has failed to mitigate her damages.

7 6.4 FOR FURTHER ANSWER AND BY WAY OF AN AFFIRMATIVE
8 DEFENSE TO PLAINTIFF'S COMPLAINT, these defendants assert that, at all
9 times relevant thereto, defendants demonstrated good faith efforts, in
10 consultation with plaintiff, to identify and make reasonable accommodations
11 that would provide plaintiff with an equally effective opportunity and would not
12 cause an undue hardship on the operation of LESA Communications.

13 6.5 FOR FURTHER ANSWER AND BY WAY OF AN AFFIRMATIVE
14 DEFENSE TO PLAINTIFF'S COMPLAINT, these defendants assert that plaintiff
15 failed to engaged in the interactive process in good faith and that therefore, her
16 claims are not ripe.

17 6.6 FOR FURTHER ANSWER AND BY WAY OF AN AFFIRMATIVE
18 DEFENSE TO PLAINTIFF'S COMPLAINT, these defendants assert that shift
19 requirements for LESA employees are job related and consistent with business
20 necessity.

21 6.7 FOR FURTHER ANSWER AND BY WAY OF AN ADDITIONAL
22 AFFIRMATIVE DEFENSE TO PLAINTIFF'S COMPLAINT, the individually

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1 named defendants allege that they are immune from some or all of the claims
 2 herein pursuant to the doctrine of qualified immunity.

3 6.8 FOR FURTHER ANSWER AND BY WAY OF AN AFFIRMATIVE
 4 DEFENSE TO PLAINTIFF'S COMPLAINT, the defendant City of Tacoma
 5 alleges that plaintiff's allegations or claimed constitutional deprivations under 42
 6 USC § 1983 are expressly and/or implicitly premised upon a theory of derivative
 7 and/or respondeat superior liability and the defendant City of Tacoma is
 8 immune from suit on that basis.

9 6.9 FOR FURTHER ANSWER AND BY WAY OF AN AFFIRMATIVE
 10 DEFENSE TO PLAINTIFF'S COMPLAINT, the defendant Pierce County alleges
 11 that plaintiff's allegations or claimed constitutional deprivations under 42 USC §
 12 1983 are expressly and/or implicitly premised upon a theory of derivative and/or
 13 respondeat superior liability and the defendant Pierce County is immune from
 14 suit on that basis.

16 6.10 FOR FURTHER ANSWER AND BY WAY OF AN AFFIRMATIVE
 17 DEFENSE TO PLAINTIFF'S COMPLAINT, the defendants assert that some or
 18 all of certain claims are barred by the applicable statute of limitations.

19 6.11 FOR FURTHER ANSWER AND BY WAY OF AN ADDITIONAL
 20 AFFIRMATIVE DEFENSE TO PLAINTIFF'S COMPLAINT, these defendants
 21 reserve the right to assert additional affirmative defenses, including
 22 counterclaims and third-party complaints, as further information becomes
 23 known.

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1 WHEREFORE, having fully answered plaintiff's complaint, defendants
2 pray for judgment as follows:

3 1. For judgment ordering that plaintiff's complaint against answering
4 defendants be dismissed with prejudice and with costs and actual attorney's
5 fees awarded to these defendants.

6 2. For judgment awarding these defendants any and all available
7 relief, including, but not limited to, their costs and reasonable attorney's fees
8 pursuant to 42 U.S.C. § 1988.

9 3. For such other and further relief as the Court deems just and
10 equitable.

11 DATED this 8th day of April, 2010.

12 13 ELIZABETH A. PAULI, City Attorney

14 By:

15 JEAN HOMAN
16 WSB #27084
17 Deputy City Attorney
18 Of Attorneys for Defendants

19 By:

20 JENNIFER J. TAYLOR
21 WSB #26607
22 Assistant City Attorney
23 Of Attorneys for Defendants

24 / /

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CERTIFICATE OF SERVICE

I hereby certify that on 4-8-10, I electronically filed, through my staff, the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to Wayne C. Fricke, attorney for plaintiff.

Jean Hines

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